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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 229

RIN 0648-XC099

Harbor Porpoise Take Reduction Plan; Coastal Gulf of Maine

Closure Area Established with a Temporary Shift of Its Effective Date

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Establishment of the Coastal Gulf of Maine Closure Area; temporary shift of its effective date.

SUMMARY: Through this notice, NOAA's National Marine Fisheries Service (NMFS) announces the establishment of the Coastal Gulf of Maine Closure Area under the Harbor Porpoise Take Reduction Plan (Plan), and temporarily shifts the effective date of year 1 of its implementation from October 1, 2012, to February 1, 2013. Recent information suggests that harbor porpoise bycatch is higher in February and March than in October and November since the implementation of sectors in May 2010, warranting a temporary shift of the closure in year 1 to a time period that would provide greater conservation benefit to harbor porpoises and allow time for more complete consideration of updated information on harbor porpoise bycatch, harbor porpoise

abundance, and fishing effort by the Harbor Porpoise Take Reduction Team (Team). As such, this area will be closed to gillnet fishing in February and March of 2013 rather than October and November of 2012.

DATES: Year 1 effective February 1, 2013; Year 2 and beyond effective October 1, 2013.

FOR FURTHER INFORMATION CONTACT: Kate Swails, NMFS, Northeast Region, 978-282-8481, [kate.swails@noaa.gov](mailto:kate.swails@noaa.gov); or Kristy Long, NMFS, Office of Protected Resources, 301-427-8402, [kristy.long@noaa.gov](mailto:kristy.long@noaa.gov).

#### SUPPLEMENTARY INFORMATION:

##### Background

The Harbor Porpoise Take Reduction Plan (Plan) was implemented in late 1998 pursuant to section 118(f) of the Marine Mammal Protection Act (MMPA) to reduce the level of serious injury and mortality of the Gulf of Maine/Bay of Fundy (GOM/BOF) stock of harbor porpoises (63 FR 66464, December 2, 1998). NMFS amended the Plan in 2010 (75 FR 7383, February 19, 2010) to address increased mortalities of harbor porpoises in New England and Mid-Atlantic commercial gillnet fisheries due to non-compliance with the Plan requirements and observed interactions occurring outside of existing management areas.

The 2010 amendments, based largely on consensus recommendations from the Team, included the expansion of

seasonal and temporal requirements within the Plan's management areas, the incorporation of additional management areas, and the creation of three closure areas off the coast of New England that would prohibit the use of gillnet gear if certain levels of harbor porpoise bycatch are exceeded (consequence closure area strategy).

For New England, the 2010 amendments to the Plan implemented a "consequence" closure strategy, which would close specific areas to gillnet gear during certain times of the year if observed average bycatch rates exceed specified target bycatch rates over the course of two consecutive management seasons. If observed bycatch rates exceeded the target rates, the following three areas would become closed: the Coastal Gulf of Maine, Eastern Cape Cod, and Cape Cod South Expansion Consequence Closure Areas. This measure was intended to provide an incentive for the gillnet industry to comply with pinger requirements in areas with historically high harbor porpoise bycatch levels resulting from relatively low levels of compliance. The consequence closures, if implemented, would further reduce harbor porpoise mortalities due to the times and areas chosen for their implementation.

The Coastal Gulf of Maine Consequence Closure would be triggered if the observed average bycatch rates of harbor porpoises in the Mid-Coast, Stellwagen Bank, and Massachusetts

Bay Management Areas (combined) exceed the target bycatch rate of 0.031 harbor porpoise takes/metric tons of fish landed (takes/mtons) (1 harbor porpoise taken per 71,117 pounds of fish landed) after two consecutive management seasons. If triggered, the use of gillnet gear would be prohibited during the months of October and November, which historically have been the months with the highest amount of observed harbor porpoise bycatch. When this area is not closed, the seasonal requirements of the three overlapping management areas, including the March gillnet closure in the Massachusetts Bay Management Area, would remain in effect.

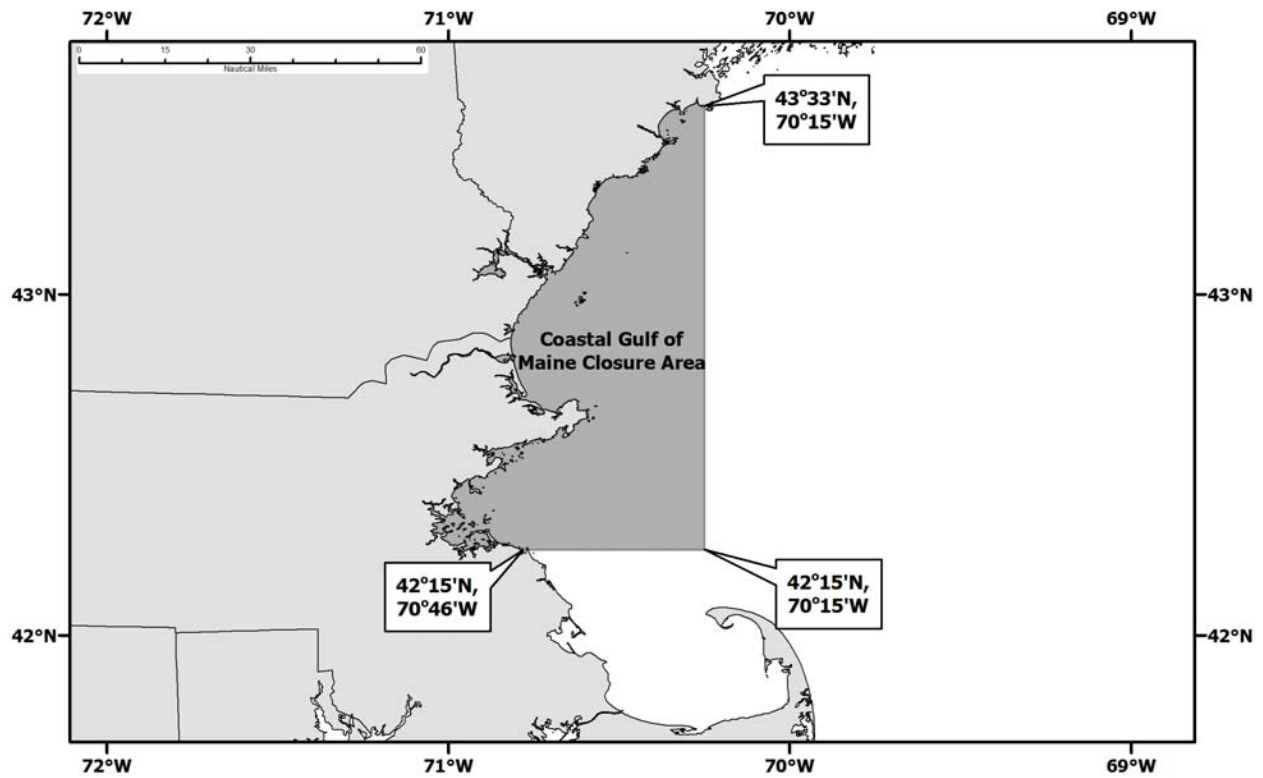
The Cape Cod South Expansion and Eastern Cape Cod Consequence Closures would be triggered if the observed average bycatch rate of harbor porpoises in the Southern New England Management Area exceeded the target bycatch rate of 0.023 takes/mtons (1 harbor porpoise taken per 95,853 pounds of fish landed) after two consecutive management seasons. If triggered, both areas would prohibit the use of gillnet gear annually from February 1 through April 30. When the consequence closure areas are not closed, the seasonal pinger requirements of the overlapping Southern New England Management Area would remain in effect.

Consequence closure area monitoring began with the start of first full management season after implementation of the 2010

amendments. The first monitoring season occurred from September 15, 2010 through May 31, 2011, and the second occurred from September 15, 2011 through May 31, 2012.

The two-year average observed harbor porpoise bycatch rate for the areas associated with the Coastal Gulf of Maine Consequence Closure Area is 0.057 takes/mtons (Orphanides, 2012). This is above the target bycatch rate (0.031 takes/mtons), triggering the implementation of the Coastal Gulf of Maine Closure Area (Figure 1).

Figure 1. Coastal Gulf of Maine Closure Area.



The two-year average observed harbor porpoise bycatch rate in the Southern New England Management Area is 0.020 takes/mtons (Orphanides, 2012), indicating that the two-year average does not exceed the target bycatch rate (0.023 takes/mtons).

#### Temporary Shift of the Coastal Gulf of Maine Closure Area Effective Date

In April 2012, NMFS sent letters to gillnet fishermen notifying them that NMFS planned to implement the Coastal Gulf of Maine Closure Area beginning October 1, 2012. Following this notification, in August 2012, NMFS received a letter from a fishing industry representative requesting that the agency review harbor porpoise bycatch and fishing effort information in the coastal Gulf of Maine area after the 2010 implementation of the amendments to the Plan, and New England Multispecies Fishery Management Plan Amendment 16, which implemented sector management and greatly modified the way New England groundfish fishermen could fish. The letter specifically requested that the timing of the closure be shifted from October and November to mid-February through March, and that the area be modified to be slightly smaller. This request highlighted a conservation benefit to harbor porpoises that would occur by shifting the timing, as well as an economic benefit for the fishing industry by allowing them to fish in the area during October and November. In considering this request, NMFS examined available

harbor porpoise bycatch and fishing information from 2010 through 2012. Within the boundaries of the Coastal Gulf of Maine Closure Area, harbor porpoise bycatch data indicated that a higher number of observed takes occurred during the spring, particularly in February and March, than in the fall (October and November), equating to a higher estimated total bycatch in the spring. Additionally, the bycatch rate during the spring was higher than in the fall.

Since the implementation of groundfish sectors in May 2010, it is possible that fishing effort distribution has shifted, thus affecting the distribution and timing of harbor porpoise bycatch. Alternatively, this change may reflect a shift in harbor porpoise distribution. However, this information has not yet been fully analyzed.

According to 50 CFR 229.33(f)(2), the Assistant Administrator for Fisheries may revise the requirements of the Plan through notification published in the Federal Register if NMFS determines that the boundaries or timing of a closed area is inappropriate. After consideration of this recent information, NMFS will temporarily shift the implementation of year 1 of the Coastal Gulf of Maine Closure Area from October 1, 2012 through November 30, 2012, to February 1, 2013 through March 31, 2013. This temporary shift will be for year 1 only, and will include the entire Coastal Gulf of Maine Closure Area



as identified in the regulations for the full two-month time period. This temporary shift of the closure will provide greater conservation benefits to harbor porpoises. During October, the Team will convene to consider data generated since the last Team meeting in late 2007. New information includes: new harbor porpoise abundance estimates, the most recent harbor porpoise bycatch information that indicates that harbor porpoise bycatch is exceeding allowable levels under the MMPA, and fishing effort and distribution information within the consequence closure area boundaries as well as throughout the entire range of the Plan. The Team will also assess how the implementation of groundfish sectors has affected gillnet effort and distribution and any related effects on harbor porpoise bycatch. This information will allow the Team to develop a comprehensive management strategy to further reduce the bycatch of harbor porpoises to acceptable levels under the MMPA. After year 1, the closure area timing will revert to October and November, pending the implementation of revised conservation measures resulting from the Team's deliberations this fall.

Despite the shift in the timing of the Coastal Gulf of Maine Closure to February and March of 2013, NMFS stresses the importance of fully complying with the Plan's pinger requirements (i.e., proper number of fully functional pingers present on each net string) to reduce harbor porpoise bycatch.

Pingers are still required on gillnet fishing gear in the Mid-Coast Management Area from September 15 through May 31 and the Massachusetts Bay and Stellwagen Bank Management Areas from November 1 through May 31. Additionally, the entire Massachusetts Bay Management Area is closed during March.

#### References

Orphanides C.D. 2012. New England harbor porpoise bycatch rates during 2010-2012 associated with Consequence Closure Areas. US Dept. of Commerce, Northeast Fisheries Science Center Reference Doc 12-19; 15 pp.

Dated: September 27, 2012

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Samuel D. Rauch III,  
Deputy Assistant Administrator for Regulatory Programs,  
performing the functions and duties of the,  
Assistant Administrator for Fisheries,  
National Marine Fisheries Service.

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